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OLC #78-0797
1 March 1978

MEMORANDUM FOR THE RECORD

SUBJECT: DCI Testimony Before the Subcommittee on
Secrecy and Disclosure, Senate Select
Committee on Intelligence, 1 March 1978

1. The Director testified today before the Subcommittee on Secrecy and Disclosure, Senate Select Committee on Intelligence (SSCI), in open session on the subject of the use of classified information in criminal prosecutions. The hearing was scheduled for 10:00 a.m. but actually commenced about 10:30 a.m. and the Director finished testifying at approximately noon. The hearing was held in room 457 Russell Senate Office Building. A transcript was taken by

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2. Members of the Subcommittee present included:

Joseph R. Biden (D., Del.), Chairman

William D. Hathaway (D., Maine)
Walter Huddleston (D., Ky.)

James B. Pearson (R., Kan.)

Present from the full Committee was:

Gary Hart (D., Colo.)

3. Members of the SSCI staff present were:

Mark Gitenstein
David Bushong
Tom Moore

Mike Epstein
Spencer Davis
Pat Norton

4. Representing the Agency were:

Stansfield Turner
Anthony A. Lapham

Director of Central Intelligence
General Counsel

Accompanied by:



Acting Legislative Counsel
Assistant General Counsel
Assistant Legislative Counsel
~~ASSISTANT LEGISLATIVE COUNSEL~~

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4. Chairman Biden opened the hearing by reading a prepared statement (attached) emphasizing the Subcommittee's year-long investigation into this problem and summarizing Subcommittee findings. The statement stressed that the hearing was an honest attempt to seek solutions for serious problems recognized by both the Executive and Legislative Branches and that the hearing should not be considered adversary. All other Senators present also made brief opening statements. Senator Hart's statement stressed his opinion that most leaks come from high-ranking Administration officials in order to support political positions and not from those commonly attacked by intelligence officials as responsible for leaks.

5. The Director next read his opening statement (attached) outlining the conflicting intelligence and criminal prosecution interests which must be resolved in deciding whether to go to trial in criminal cases which may involve use of classified information by the prosecution or defense. The statement concluded with a strong attack of those who take it upon themselves to leak information. The Director stated that there are acceptable alternatives to this, such as going to one of the Congressional oversight committees or to the Intelligence Oversight Board, but these alternatives have not been chosen by those leaking information.

6. Chairman Biden set the stage for questions by reading five Committee staff-developed hypotheticals included to illustrate problems in this area. However, no specific questions on the hypotheticals were asked by the members.

7. Senator Hathaway suggested that perhaps a third party--other than the Director or the Attorney General--should make a decision on whether to prosecute. The Director pointed out that he is satisfied with the present situation wherein the Attorney General makes the final decision unless the Director appeals to the President. The Director rejected the suggestion of a third party, but, at Senator Hathaway's request, agreed to give this matter additional thought.

8. Senator Hart expressed irritation at parts of the Director's statement wherein he attacked leakers by emphasizing that most leaks come from high-level officials. The Director acknowledged he was concerned about these leaks as well as those by other officials. He pointed out that, in his experience, these high-level leaks had not been as serious as the type he was focusing on in his opening statement.

9. Chairman Biden concluded the questioning by asking if there were any administrative ways to penalize leakers, such as docking pay or reducing or eliminating pensions, and asked if the Director would want this authority. The Director pointed out his present authority in this matter was unclear except that he had the unqualified right to dismiss present employees. He expressed reservations about the DCI having this additional authority unless there were firm checks and balances to prevent arbitrariness.

10. Possible follow-up items:

a. If worthwhile, communicate with the Committee about Senator Hathaway's suggestion that a third party make the final decision regarding whether to go to prosecution.

b. Some follow-up with Senator Hart about his concern over high-level leakers would be helpful.

c. Chairman Biden indicated that additional questions, chiefly on possible administrative remedies, would be submitted to the Director.



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Assistant Legislative Counsel

Attachments

Distribution:

Orig - OLC Subj w/att

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